

Waterspoon  
14167 Proc I

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-197123

DATE: June 30, 1980

MATTER OF: C. L. Systems, Inc. *DLG04877*

DIGEST: *[Protest Against Proposal Evaluation]*

1. Protest that technical evaluation point scores received for quality of experience and for system demonstration were unreasonable is denied where subjective comments and explanations of technical panel members support scores and protester has offered only unsupported assertions to prove its position.
2. Protest that system's life cost evaluation of price proposals was incorrect is denied where agency performed reevaluation taking protester's objections into account, independent review confirms reasonableness of reevaluation and awardee's offer was still found to be lowest in cost.

C. L. Systems, Inc. (CLSI), has protested the award of a contract to DataPhase Systems (DataPhase) for an automated library information system for the National Agricultural Library. The contract was awarded under request for proposals (RFP) No. 5-A-SEA-80, issued by the Department of Agriculture (Agriculture). *DLG04877*  
*AGC001*

CLSI and Dataphase submitted the only proposals under the RFP on September 7, 1979. The companies' proposals were then evaluated using a weighted combination of technical and price standards to arrive at an overall numerical rating. Price was worth a possible 30 points; technical (composed of "methods, documentation, demonstration and user contracts"), a possible 70 points. CLSI received a technical rating of 38 and a price rating of 27.9 for a total of 65.9. DataPhase received a technical rating of 46.25 and a price rating of 30 for a total of 76.25. Based on that higher total rating, award was made to DataPhase on December 4, 1979.

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in the amount of \$100,000 for fiscal year 1980. Included in the "lease with option-to-purchase" contract were four 1-year options for the system.

CLSI argues that the price and technical evaluations of both offers were in error in a number of respects and that if they were done properly, CLSI's proposal would be the highest rated. Based on our review, we find no merit in the protest.

#### Technical Evaluation

Under the "user contracts" part of the "demonstration and user contracts" evaluation standard, the RFP required that the offerors submit the name, address, telephone number and date of installation of three users of the proposed system "so it can be evaluated." Those listed systems were to have been fully operational for 1 year, with certain minimum characteristics and performing certain functions. The technical evaluation panel contacted two of the users of the systems listed by each offeror and questioned the users concerning specifications and performance of the systems. Reflecting the total points (10) available under this part of the evaluation standard, the responses were the basis for point ratings, from 0 to 10. DataPhase received an average score of 7.5 for this part from the four evaluators; CLSI received a score of 5.

CLSI contends that its listed systems meet all requirements and, therefore, it should have received a perfect score of 10. CLSI states that it "is not aware of any site at which DataPhase Systems, Inc. has had its proposed system fully operational for a period of one year with the specified minimum characteristics."

At the outset, we note that in resolving cases in which a protester, as here, challenges the validity of a technical evaluation, it is not the function of our Office to evaluate proposals in order to determine which should have been selected for award. The determination of the relative merits of proposals is the responsibility of the procuring agency since it must bear the burden of any difficulties incurred by reason

of a defective evaluation. In light of this, we have held that procuring officials enjoy a reasonable degree of discretion in the evaluation of proposals and such discretion must not be disturbed unless shown to be arbitrary or in violation of the procurement statutes and regulations. Industrial Technological Associates, Inc., B-194398.1, July 23, 1979, 79-2 CPD 47. Thus, our Office will not substitute its judgment for that of the procuring agency by making an independent determination. John M. Cockerham & Associates, Inc.; Decision Planning Corporation, B-193124, March 14, 1979, 79-1 CPD 180. Additionally, the protester has the burden of affirmatively proving its case. Reliable Maintenance Service, Inc.,-- request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 33.

Here, CLSI has done no more than make unsupported assertions concerning the installations listed by itself and DataPhase. CLSI has not carried its burden of showing that the ratings assigned to the offerors under this section were unreasonable or arbitrary.

Under the "demonstration" part of the "demonstration and user contracts" evaluation standard, the RFP also informed offerors that a test would be conducted on one of the listed systems, again to aid in assessing the performance capabilities of the proposed system. These tests were conducted without the offerors being present. Two of the four technical evaluation team members conducted the tests. CLSI's proposed system was tested at Florida State University.

Although the demonstration was worth 20 points, the calculation of point scores effectively limited the weight of this consideration to 10. Since only two members of the evaluation panel saw the demonstrations, there was only a total of 40 points that could be awarded. However, Agriculture used zero-point scores for the two nonattending members, added the points awarded by the attending members and divided by four, thereby cutting the weight of this consideration in half.

CLSI was awarded a zero by one attending member and a 10 by the other, for a total average point score of 2.5. DataPhase was awarded a perfect 20 by one attending member and a 15 by the other, for a total of 8.75.

CLSI complains generally of the fact that two of the panelists did not attend the demonstration and argues that the panelist who awarded a perfect score to DataPhase and a zero to CLSI obviously misunderstood the nature of the scoring. CLSI contends that the subjective comments of the panel members do not support extreme scoring.

We disagree with CLSI's analysis. The possible scoring of the two nonattending panelists is pure speculation. Further, their absence prejudiced both parties equally in terms of potential score. Regarding the extreme scoring by one panel member, we cannot say that the mere fact that the scores were extreme casts doubt on their validity. While CLSI argues that the scores do not reflect the subjective comments, the comments were in fact almost uniformly positive concerning DataPhase's demonstration and uniformly negative concerning CLSI's.

Again we feel that CLSI has not shown that the evaluation was unreasonable or arbitrary; therefore, it must stand.

#### Cost Analysis

The offerors were requested to furnish a lease with option-to-purchase price proposal, because funds were not available for purchase and lease-to-ownership proposals were not considered desirable. A "system's life" cost evaluation was performed, and Agriculture determined that DataPhase's proposal offered the most advantageous price. DataPhase was awarded the full 30 points for price; CLSI received 27.9 points.

CLSI contended initially that the cost evaluation was incorrect in three respects and that if performed correctly, its proposal was least expensive. CLSI argued that certain optional items were included by Agriculture in evaluating its proposal which were not included in the evaluation of the DataPhase proposal. Also, several items offered by DataPhase did not include DataPhase's price for maintenance. CLSI further contended that its "best and final" prices were not evaluated. To illustrate its contentions, CLSI submitted its own cost evaluation which shows CLSI to be low.

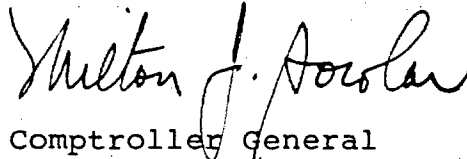
In response to these allegations, Agriculture admitted that some errors in the analysis may have occurred. Therefore, it performed a new analysis, taking these allegations into account. DataPhase's proposal was found to still be the least expensive. CLSI criticized that evaluation for the following reasons. The procedure for analyzing the non-included maintenance did so only for purchase, not lease. The analysis does not indicate that two of DataPhase's line item 28 (portable OCR-A terminals) were included, as they should have been. Finally, CLSI insists that its own cost evaluation has not been shown to be erroneous.

The second evaluation performed by Agriculture was reviewed by our audit staff. Based on their review, we conclude that Agriculture included a reasonable factor for the nonincluded maintenance in its reevaluation. Also, our audit staff compared the proposals with that factor included, under various lease and purchase options. DataPhase's price was consistently lower. Additionally, the reevaluation expressly contained two of DataPhase's line item 28 for nonincluded maintenance.

Based on Agriculture's reevaluation and the analysis performed by our audit staff, it appears that the prices of the two offers were closer than initially indicated, but that DataPhase's proposal was still the least expensive.

CLSI's contention that its own cost evaluation has not been shown to be erroneous does not afford a basis for questioning the contract. While Agriculture's cost reevaluation does not specifically refute CLSI's evaluation line for line, the conclusions of these evaluations differ markedly. In our view, CLSI has not shown Agriculture's conclusion to be erroneous.

Protest denied.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States